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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/128,304	08/03/1998	N. PARKER WILLIS	CRDP-2700	2536

23639 7590 01/13/2004  
BINGHAM, MCCUTCHEN LLP  
THREE EMBARCADERO, SUITE 1800  
SAN FRANCISCO, CA 94111-4067

EXAMINER
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MANTIS MERCADER, ELENI M

ART UNIT	PAPER NUMBER
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3737

DATE MAILED: 01/13/2004

21

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/128,304

Applicant(s)

WILLIS ET AL.

Examiner

Eleni Mantis Mercader

Art Unit

3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **FINAL ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed on 12/30/03 have been fully considered but they are not persuasive. Applicant's arguments regarding whether Budd'108 teaches a three-dimensional deformable model have been considered. Applicant's attention is again invited to Figure 7 which clearly indicates a deformable model of the heart and which is referred to as a dynamic model of the heart depicting the changing motion of the heart (see col. 7, lines 15-55). The two representations of Figure 7 clearly indicate a dynamic three-dimensional model or a deformable three dimensional model. Also see col. 8, lines 45-59, wherein the model of Figure 7 is referred to as a "three dimensional model of the heart". The Examiner's position is that the reference teaches all the elements of the current invention so as to constitute clear anticipation. It is the Applicant's burden to indicate why this reference does not clearly anticipate. The single reference as to why the current reference does not anticipate, namely that there is no teaching of a three dimensional deformable model has been addressed herein and thereby this action is made final.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Art Unit: 3737

2. Claims 1-60 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Budd et al.'108, of record.

Budd et al.'108 teach all the features of the instant invention including a deforming model as illustrated in Figure 7, see col. 7, lines 15-55. Applicant's attention is again invited to Figure 7 which clearly indicates a deformable model of the heart and which is referred to as a dynamic model of the heart depicting the changing motion of the heart (see col. 7, lines 15-55). The two representations of Figure 7 clearly indicate a dynamic three-dimensional model or a deformable three dimensional model. Also see col. 8, lines 45-59, wherein the model of Figure 7 is referred to as a "three dimensional model of the heart".

#### *Conclusion*

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 3737

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eleni Mantis Mercader whose telephone number is 703 308-0899. The examiner can normally be reached on Mon. - Fri., 8:00 a.m.-6:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Ruhl can be reached on 703 308-2262. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-0858.

  
Eleni Mantis Mercader  
Primary Examiner  
Art Unit 3737

EMM